IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Revised
Not Restricted
Suitable for Publication

Case No. CR-23-01276

DIRECTOR OF PUBLIC PROSECUTIONS

v

MAROUN EL-ASMAR

JUDGE:	His Honour Judge Rozen
WHERE HELD:	Melbourne
DATE OF HEARING:	7 February 2024
DATE OF SENTENCE:	9 February 2024
CASE MAY BE CITED AS:	DPP v EL-ASMAR
MEDIUM NEUTRAL CITATION:	[2024] VCC 82

REASONS FOR SENTENCE

Subject:	CRIMINAL LAW
Catchwords:	Obtain financial advantage by deception – Guilty plea – No prior criminal history – White collar offender – Short duration – Dishonestly obtained to fund gambling addiction
Legislation Cited:	*Crimes Act 1958* (Vic); *Sentencing Act 1991* (Vic)
Cases Cited:	*DPP v Bulfin* [1998] 4 VR 114; *DPP v Paapaa* [2019] VCC 2032; *DPP v Venn* [2017] VCC 1043; *DPP v Chapman* [2016] VCC 231; *Dyason v The Queen* [2015] VSCA 120; *DPP v Caulfield* [2019] VSCA 131: *Boulton v The Queen* [2014] VSCA 342; *DPP v Zanin* [2020] VCC 963; *DPP v Brown* [2020] VCC 1522.
Sentence:	2 year 6 month CCO – s 6AAA declaration – Compensation order

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APPEARANCES:	Counsel	Solicitors
For the DPP	Ms D. Guesdon	Office of Public Prosecutions
For the Accused	Mr V. Vuu (Plea) Mr R. Bhattacharya (Sentence)	Leanne Warren & Associates

HIS HONOUR:

1 Maroun El-Asmar, you have been charged with 13 charges of obtaining a financial advantage by deception contrary to s 82(1) of the *Crimes Act 1958* (Vic). Each charge carries a maximum sentence of 10 years' imprisonment.

Background

2 On 22 June 2022 you were employed at All Saints Estate at Wahgunyah in the Rutherglen Wine Region as the Hospitality Operations Manager. The winery is a popular wedding venue.

3 As a full-time employee you were required to perform 38 hours of work per week and received a remunerated salary of $85,000 per annum plus superannuation. You also took on the role of Events Manager in a temporary capacity while recruitment for the position occurred. As the Events Manager role was paid at a lower rate, you continued to receive the Hospitality Operations Manager rate while you filled in in this secondary position.

4 You were provided with free accommodation in a share house owned by Eliza Brown, the Chief Executive Officer of All Saints Estate. This accommodation was provided for a three month period to allow you to settle in the area, and you utilised this house during your period of employment.

5 As part of your employment with the winery, you used the events mobile phone and events email inbox.

6 During the time of your employment, you used the nick-name 'Mario' and were often referred to by this name by fellow employees and customers.

The offending

7 You are to be sentenced on the basis of the Summary of Prosecution Opening dated 12 December 2023, which is an agreed document.[1] The following is drawn from that summary.

8 Between 21 July 2022 and 5 August 2022 you embarked on a course of offending through which you dishonestly obtained $106,797.50.

9 In each case, you were paid a deposit for a wedding at the winery in your capacity as events manager, but the money was paid into your personal bank account rather than an account maintained by your employer. The offending can be briefly summarised as follows.

Polly Edwards and Marshall Jones – Charge 1

10 You met Polly Edwards and Marshall Jones on 3 July 2022 at All Saints Estate, introducing yourself as Mario the Events Coordinator.

11 You subsequently communicated with Ms Edwards and Mr Jones via the All Saints Estate events email, events phone number, and through a Whatsapp group which you created.

12 On 21 July 2022 you sent a contract titled ‘Event agreement’ to Ms Edwards. The contract discussed the terms of the event and showed an outstanding deposit of $5,000 which was due that same day. The contract included bank details for an account not linked to All Saints Estate but instead held through the Bendigo Bank in your name.

13 On 21 July 2022 Mr Jones deposited $5,000 into your bank account. Ms Edwards and Mr Jones had been deceived by you into believing they had paid a deposit to All Saints Estate.

[1] Exhibit A.

Bethan Pickrell and Bruce Allen – Charge 2

14 On 9 July 2022 Bethan Pickrell and Bruce Allen attended All Saints Estate for a tour of the venue. You introduced yourself to them as the new events manager Mario and conducted the tour.

15 Following the tour, you continued to communicate with Ms Pickrell and Mr Allen using the phone and email belonging to All Saints Estate, and through a Whatsapp group you created.

16 On 24 July 2022 you sent a contract to Ms Pickrell via email. The contract included a request for the immediate payment of a $5,000 deposit to be paid into your bank account.

17 Mr Allen transferred $5,000 to your account. Ms Pickrell and Mr Allen had been deceived into believing they had paid a deposit to All Saints Estate.

Stephanie Borman and Jason Dowler – Charges 3 and 5

18 In 2021 during the COVID lockdowns Stephanie BORMANN and Jason DOWLER postponed a wedding that had been booked at All Saints Estate.

19 In late June or early July 2022 you contacted Ms Bormann and introduced yourself as Mario from All Saints Estate. You set up a WhatsApp chat group to assist communication and used the previous email and telephone numbers that Ms Bormann had communicated with All Saints Estate through.

20 On 26 July 2022 Ms Bormann received an invoice from you requesting the immediate payment of $13,275 to your bank account. Mr Dowler made two deposits into your bank account of $10,000 on that date and $3,275 on the following day.

21 Mr Dowler and Ms Bormann were deceived by you into believing that they had paid a deposit to All Saints Estate on each of the dates in question.

Brett Harris and Hayley Campbell – Charge 4

22 In July 2022 you spoke to Brett Harris and Hayley Campbell when they made enquiries with All Saints Estate about getting married at the venue. You provided the All Saints Estate events mobile number and set up a Whatsapp group with Mr Harris.

23 On 15 July 2022 Mr Harris requested a quote from you as discussed for the event. You emailed him a quote on 16 July 2022 with the total wedding cost listed as $23,100.27.

24 On 25 July 2022 you sent WhatsApp messages requesting payment of a $5,000 deposit to All Saints Estate to secure the date and a photograph which contained your bank details for Mr Harris to deposit into.

25 On 26 July 2022 Mr Harris made payment of $5,000 to your account. Mr Harris and Ms Campbell were deceived by you into believing that they had paid a deposit to All Saints Estate.

Samantha Richardson and Austin McGrath – Charge 6

26 In July 2022 you contacted Samantha Richardson regarding her upcoming wedding to Austin McGrath which had been booked at All Saints Estate.

27 You hosted an online Teams meeting with Ms Richardson on 15 July 2022 regarding details for the wedding. You suggested future communication occur on WhatsApp and created a group.

28 On 28 July 2022 you sent Ms Richardson an email with an attached invoice requesting immediate payment of $6,025 to your bank account.

29 On 30 July 2022 you communicated with Ms Richardson requesting the invoice be paid as soon as possible. Prior to paying the invoice Ms Richardson noticed the bank details had changed from previous payments she had made to All

Saints Estate. She messaged you on WhatsApp and you stated it was a new All Saints Estate account for events.

30 Ms Richardson made payment of $6,025 to the account. Ms Richardson and Mr McGrath were deceived by you into believing that they had paid a deposit to All Saints Estate.

Kayla Grassi and Jarrod Everitt – Charge 7

31 Kayla Grassi had been in contact with All Saints Estate in 2022 to organise her wedding to Jarrod Everitt.

32 On Friday 22 July 2022 at 12:00pm you met with Ms Grassi at All Saints Estate and gave her a tour of the venue. You recommended using WhatsApp to communicate.

33 On 28 July 2022 after multiple discussions, you sent her a wedding contract. It included a request for payment of $8,750 to be paid into your bank account.

34 On 31 July 2022 Mr Everitt made a payment of $8,750 to your account. Mr Everitt and Ms Grassi were deceived by you into believing they had paid All Saints Estate.

Tara Searl and Sam Demarzo – Charge 8

35 In July 2022 Ms Searl contacted All Saints Estate to discuss having her wedding to Sam Demarzo at the venue.

36 After initial contact Ms Searl participated in an online Teams meeting with you on 29 July 2022 to discuss packages and options. You suggested remaining in touch on WhatsApp and a group chat was created.

37 On 31 July 2022 you sent Ms Searl an invoice requesting payment for $5,000 for a deposit. The invoice listed your account as the account to be paid into.

38 On 31 July 2022 Ms Searl paid $5000 into the account. She and her fiancé were deceived into believing they had paid All Saints Estate.

Jessica Tossell and Callum Doyle – Charge 9

39 In July 2022 Jessica Tossell and Callum Doyle recommenced contact with All Saints Estate to plan their wedding at the venue after previously postponing it.

40 On 31 July 2022 after discussions you sent an invoice requesting the first payment of $7,925 to be paid into your account.

41 On 31 July 2022 Mr Doyle made payment of $7,925 to your account. He and Ms Tossell were deceived into believing they had paid All Saints Estate.

Sarah Lawrence – Charge 10

42 On 6 October 2021 Sarah Lawrence contacted All Saints Estate to organise her wedding at the venue. She initially dealt with the previous events coordinator.

43 In July 2022 you contacted Ms Lawrence. You advised her that you were the new events manager and requested that you stay in touch on WhatsApp.

44 You had phone meetings with Ms Lawrence on 20 July 2022 and 4 August 2022 to discuss the details of the wedding.

45 On 4 August 2022 you contacted Ms Lawrence saying a 50 percent payment was overdue and requesting $6,175 be paid straight away. Ms Lawrence received an invoice for the amount and the account details on the invoice were for your account.

46 Ms Lawrence made a payment of $6,175 into your account. She was deceived into believing she had paid All Saints Estate.

Hannah Roberts – Charge 11

47 In July 2022 you contacted Hannah Roberts stating that her wedding was coming up and you needed to discuss the logistics. You requested that ongoing communications occur through WhatsApp, which started on 22 July 2022.

48 On 4 August 2022 you contacted Ms Roberts via WhatsApp and requested payment of the 50 percent deposit that was overdue. Ms Roberts agreed to pay $10,000 to settle the overdue amount. You sent a photograph via WhatsApp containing your bank details, stating it was All Saints Estate's new bank account.

49 Ms Roberts paid $10,000 into the account. She was deceived into believing she had paid All Saints Estate.

Tony Fieldler and Simone Spencer – Charge 12

50 Tony Fieldler and Simone Spencer had previously booked a wedding at All Saints Estate that had been cancelled due to Covid 19 restrictions. They recommenced organising the wedding with you on 9 July 2022. You set up a WhatsApp chat for further communication.

51 After some conversations and amendments, you sent an invoice to Tony Fieldler on 27 July 2022 requesting payment of $20,000 which was 50 percent of the outstanding amount. Payment was requested to be made in to your account.

52 On 4 August 2022 Tony Fieldler paid $20,000 into your account. He and his fiancé were deceived into believing they had paid All Saints Estate.

Roxy Barber and Damian Demasi – Charge 13

53 Roxy Barber and Damian Demasi recommenced communicating with All Saints Estate in June 2022, and in July 2022 they started dealing with you. They had previously paid a $5,000 deposit to save the date for their wedding.

54 On 4 August 2022 Ms Barber received an invoice from you requesting the first payment of 50 percent of the outstanding amount. This required immediate payment of $14,647.50 which you requested be paid into your account.

55 On 5 August 2022 Ms Barber sent payment of $14,647.50 to your bank account. She and Mr Demasi were deceived into believing that they had paid All Saints Estate.

Transactions

56 The total amount obtained by you through the deceptions was $106,797.50 which was all paid into your Bendigo Bank account. These payments were all made under the belief that the victims were paying deposits or part payments of their weddings to All Saints Estate.

57 All Saints Estate did not receive any of the funds but, to its credit, honoured the payments.

58 Records obtained by police from Bendigo Bank show:

- The bank account the funds were paid into was set up with your name and details.
- $12,000 was transferred from this account to the account of your partner Helen Skouloudis; you subsequently withdrew this amount from Ms Skouloudis's account.
- $94,795.10 was transferred from the account to a National Australia Bank account belonging to you.

- Records obtained by police from the National Australia Bank show:
    - The account received the $94,795.10 sent from the Bendigo Bank account.

- All of the money was transferred to a second, linked National Australia Bank account.

- Records for the second National Australia Bank account show:

    - $99,559.98 was transferred to this account from the first National Australia Bank account during the period of the offending.

    - This bank account is the same account you nominated and were paid into by All Saints Estate.

    - Between 5 August and 17 August 2022 during two separate attendances, $12,255.22 was withdrawn from this account from Cashcard ATMs at Crown Towers.

    - Between 10 June 2022 and 9 August 2022, $27,355.96 was transferred into PlayUp Interactive, an Australian Sports and Racing betting company.

- Records obtained from Crown Casino show that:

    - on 5, 6, 7, and 8 August 2022 you used your Loyalty Card with Crown Casino, recording losses of $38,517 and wins of $12,728 with a total net loss of -$25,789 during this period; and

    - on 15, 16, 17 and 18 August 2022 you used your Loyalty Card with Crown Casino, recording losses of $11,528 and wins of $2,884 with a total net loss of -$8,644.

- Crown Casino provided CCTV footage of you on site between 5 and 8 of August 2022 which is consistent with your EFTPOS card uses and Loyalty Card uses during this period.

Arrest and Interview

- On 27 August 2022 you were intercepted at the Tullamarine Airport by Australian Federal Police Officer Constable Nerris Kusta, while attempting to leave the country. Your partner, Ms Skouloudis, gave sworn evidence that shortly before this date, she had lined up a possible job for you in Saudi Arabia and that you were intending to attend an interview for that job and that was why you were leaving the country.

- Ms Guesdon for the prosecution fairly conceded that it was not established to the requisite standard that your sudden departure represented a form of consciousness of guilt or an attempt to evade the authorities. However, she did point out that you must have been aware that your crimes would shortly be detected as you had left your employment very recently.

- You were taken into custody and transported to the Broadmeadows Police Station. You were charged and bailed to attend Wodonga Magistrates' Court on 14 March 2023.

- **Magistrates' Court**

- An application for the matter to be heard and determined summarily by the Magistrates' Court was made on your behalf in 2023. Despite being unopposed, the application was rejected by the Magistrates' Court and your case was transferred to this court. As pointed out by your counsel this has delayed the finalisation of the case – a matter to which I will return later in these reasons.

Objective Gravity

59 The offences you have committed are, as is clear from the prescribed maximum penalty of 10 years' imprisonment, serious criminal offences. The seriousness of this type of offending is accurately described in the following passage from the Court of Appeal judgment in the well known case of *DPP v Bulfin*:

- Whatever the motivation, offences of the kind here in question almost invariably involve a carefully calculated course of conduct over a long period, repeated deliberate acts of dishonesty, substantial amounts of money and frequently losses (often tragic in their impact) to large numbers of small investors. The offender often holds a position making it possible, or has the ability, to disguise or camouflage the conduct in question. Detection is difficult, the investigation of the crime usually lengthy and very expensive, and the problems of trial and proof will frequently be extreme. ... The result of such considerations, in my view, is that the element of general deterrence will usually carry particular significance in sentencing for crimes such as the present, …together with the requirement for strong denunciation by the sentencing court.[2]

60 Although the offending in *Bulfin* was far more serious than yours and involved far greater planning, the general observations by the Court are apposite to your case.

61 The aspects of your offending that are relevant to its objective gravity include the total amount you obtained. It is an agreed fact that you obtained and spent the $106,797.50 you obtained through your deceptions. Your victims were not out of pocket as the company honoured the deposits.

62 This means that the true victim of your offending is the All Saints winery. Fortunately for that company, it was able to recoup some of its losses through an insurance claim. The agreed amount of the insurance payment is $49,000. Therefore the loss to the company is $57,797.50 You have consented to a compensation order in favour of the company in this amount.

63 Although $106,797.50 is not an insignificant amount, it is relatively small compared to the amounts involved in most such cases in this Court. Similarly the

[2] [1998] 4 VR 114, 132 (‘***Bulfin***’).

period over which you offended (a little over 2 weeks) is brief compared to the months or years over which offending often occurs in such cases.

64 You have not repaid any of the money you obtained although your counsel informed the court at the hearing of your plea that your sister, who lives in Qatar, had agreed to repay the $57,797.50 that is owing as you remain unable to do so.

65 It is also relevant that you offended against fourteen couples and that you breached the trust that your employer invested in you.

66 Having regard to the range of cases that come before this court, I assess your offending as low to mid-range.

Moral culpability

67 You were under considerable personal strain at the time of your offending. You were working very long hours and, apart from Ms Skouloudis, had little support in the community. Your life was your work. Your living quarters placed a strain on your relationship. Tragically, you and Ms Skouloudis were coming to terms with a miscarriage she had suffered.

68 It was in this context that you turned to gambling.

69 None of this excuses your offending. However it provides a context and an explanation. Despite these matters, I still conclude that your moral responsibility is considerable.

Victim Impact

70 The court has received a Victim Impact Statement from All Saints Estate's CEO Eliza Brown, on behalf of the company.[3] Ms Brown read her statement to the Court. Ms Brown writes that the impact of the offending has been 'devastating, both financially and emotionally'.

[3] Victim Impact Statement of Eliza Brown dated 27 April 2023 (Exhibit P2).

71 As well as the financial impact of your offending on the business, Ms Brown writes of the betrayal felt by the owners of the company when you took advantage of their trust. She describes feeling not only vulnerable and exposed, but feelings of shame, embarrassment and self-doubt.

72 While your former employer is the victim of your offending in a practical sense, this is only because it has honoured each of the payments made by the thirteen young couples. Although I do not have Victim Impact Statements from any of them, it is they who you deceived. It is relevant to take into account the likely effect on them. Planning a wedding should be joyful. For these young couples the memory of doing so will be somewhat soured by their brush with the legal system.

Personal circumstances

73 You were 41 years of age at the time of the offending and are now 43.

74 You were born in Lebanon in 1981 and arrived in Australia with your family when you were seven years old. Your family fled Lebanon during the civil war and spent time in Syria and Jordan before settling in Sydney.

75 Growing up in Lebanon your mother was always home, while your father was in the army. After migrating to Australia, the family would frequently return to Lebanon when it was safe to do so, subsequently returning to Australia. You grew up in a financially stable environment and describe your family as ‘well off, middle class people’.

76 You were a good student and had no difficulties either academically or socially in a school environment. At 18 you began a hotel management course in the Blue Mountains, New South Wales.

77 You then travelled to Switzerland to continue your studies obtaining Bachelor and Masters degrees in hospitality, as well as enjoying success as a DJ. You became

a partner in a club and obtained residency, remaining in Switzerland from 2000 to 2009.

78 In the following 10 years you travelled the world working in Geneva, Dubai, Lebanon and Ukraine. You worked long hours and invested in hospitality by acquiring many venues.

79 You returned to Australia in 2019 to register a company that was developing hotel software, however the Covid-19 pandemic and its effect on the hospitality industry meant you had no income. You were living in a hostel and the business you had returned to Australia for failed.

80 You have had one long term intimate relationship with Helen Skouloudis who you met in Australia in 2019. You remain together and have her ongoing support. She gave evidence in person and impressed me as a very genuine and loving partner. You are indeed fortunate to have her in your camp Mr El Asmar. Her ongoing support is part of the reason I have taken the course that I have in sentencing you. Ms Skouloudis has provided two character references about you to the court which I will discuss later in these reasons.

81 After your return to Australia, you worked in a number of hospitality positions, moving from job to job until you obtained a position in a hotel in Alexandra, and then another position at a winery nearby. Sadly you were exposed to racism while working in this job.

82 As part of your salary at the winery you were provided accommodation, however this was shared with the General Manager of the company. You worked long hours and difficulties in your relationship with your partner occurred due to the lack of privacy resulting from your living situation.

83 It is at this point that you began visiting the local RSL and gambling. In the face of ongoing conflict with your colleagues and your partner, you became depressed

and an all too familiar pattern emerged where you would gamble and lose money, then gamble again to recover your losses.

84 Until recently you were living with your parents in Sydney. You now live in rented accommodation in Alexandra with Ms Skouloudis although you were recently evicted for failing to pay the rent. You have no personal assets and are in receipt of Centrelink benefits.

85 You and Ms Skouloudis have paid for a 30 day lease on accommodation in Melbourne. Although she works in Sydney, she is prepared to move to Melbourne to support you through a CCO. This is a further reason why I am imposing the sentence that I am.

Mental Health

86 For the purposes of this hearing, your solicitors arranged for you to be assessed by Mr Warren Simmons, consulting psychologist. Mr Simmons interviewed you by video-conference on 4 December 2023. He has also read the charges and the prosecution summary.

87 Mr Simmons reported on his findings in a written report dated 7 December 2023.[4]

88 He does not diagnose you with any particular condition but informs the court that you would 'benefit from a referral for counselling with regard to [your] gambling difficulties'.[5]

89 The court has also been provided with a brief report dated 24 July 2023 by Marlese Bovenkerk, forensic psychologist.[6] Ms Bovenkerk has treated you for a Gambling Disorder since 10 January 2023. You have attended thirty sessions with her and have been a willing and motivated participant. Like Mr Simmons, Ms Bovenkerk opines that you require ongoing treatment.

[4] Exhibit D1.
[5] Ibid, [23].
[6] Exhibit D2.

90 The court has been provided with a print-out of your attendances at the Gambling Anonymous Program.[7] Since 6 October 2022 you have attended 133 sessions at your own expense. This is most admirable and is clear evidence of the lengths you have gone to in order to rehabilitate yourself.

91 More recently you have been excluded from Crown Casino on your own application.[8]

Other matters in mitigation

92 You were charged on 14 March 2023 and indicated an intention to plead guilty at the first committal mention on 11 April 2023. Your case proceeded as a straight hand up brief matter and, as noted, you unsuccessfully sought summary disposal.

93 The prosecution accepts that yours is a guilty plea made at the first opportunity. By pleading guilty you have accepted responsibility for your offending. You have also saved the court and the prosecuting authorities the resources that would be needed to conduct a trial. Most importantly, you have saved the witnesses the experience of giving evidence both at a committal hearing and at trial.

94 Further, I am satisfied that your guilty pleas represent genuine remorse on your part. Mr Simmons reports that you did not seek to justify your behaviour and acknowledged that what you did was wrong.[9] A character reference from Terry Gaitley, who knows you through Gamblers Anonymous, states that you are deeply remorseful for your actions.[10] Ms Skouloudis confirmed this in her oral evidence.

Delay

[7] Exhibit D3.
[8] Crown Exclusion Order dated 6 February 2024 (exhibit D8).
[9] Exhibit D1, [17].
[10] Letter from Terry Gaitley dated 12 July 2023 (Exhibit D6). Similar comments are contained in a letter from Wesley Cross dated 12 July 2023 (Exhibit D7).

95 Eleven months have passed between the date the charges were filed and the finalisation of your case. This is not an inordinate delay but is a significant sentencing consideration in your case for two reasons. The first reason is that the matter has hung over you for that time. Ms Skouloudis explained that you have struggled to cope with the shame of these charges and the uncertainty in your life. You have threatened to take your own life.

96 The second reason the delay is relevant is that, despite these difficulties, you have used the time to address your gambling disorder, recognising that it is the root cause of your offending. This is relevant to your prospects of rehabilitation which I will now discuss.

Rehabilitation

97 The facilitation of the rehabilitation of an offender is one of the purposes for which sentences are imposed under Victorian law.[11] Rehabilitating an offender is in their interests, the interests of their immediate family and also the long term interests of the community in which they live. A fully rehabilitated offender will be unlikely to re-offend.

98 Assessing the future rehabilitation prospects of an offender is difficult. The best guide to the future is usually the past.

99 Your impressive work history and lack of any prior convictions are relevant to my assessment of your rehabilitation prospects, as is your acceptance of responsibility for your offending. I consider that the major impediment to your future prospects is your gambling problem. You have clearly made extensive efforts to address this disorder but I note the recently obtained opinion of Mr Simmons that you require further counselling.[12]

100 I conclude that, provided you receive this further support, your future prospects are at least reasonable.

[11] *Sentencing Act 1991* (Vic), s 5(1)(c).
[12] Exhibit D1, [23].

Submissions of the Parties

101 In comprehensive plea submissions, your counsel Mr Vuu submitted that you are in recovery for your gambling disorder, and that you no longer gamble. The record of attendance at Gambling Anonymous and character references from fellow attendees are testament to this.

102 Mr Vuu submitted that a CCO is an appropriate sentence to address all of the relevant sentencing considerations.[13] While conceding that your offending involved a significant breach of trust, he referred to the loss suffered by your employer as being less than $60,000 taking into account the insurance payment. Mr Vuu urged me not to find that any of the couples had suffered any loss. I reject this. As noted earlier, while they are not out of pocket, there is the emotional stress to consider.

103 Mr Vuu referred to your acceptance of responsibility and your early plea of guilty. My attention was drawn to the character references filed on your behalf and the medical opinion of Mr Simmons.

104 Ms Guesdon, on behalf of the prosecution submitted that a CCO was within the sentencing range available to the court.

Current sentencing practices

105 The court was referred by Mr Vuu to three decisions of this Court in which straight CCOs were imposed in cases that are said to be comparable with yours. In each case the offender, who had no prior convictions, pleaded guilty to dishonestly obtaining money from their employer. The amounts involved were in each case less than $250,000.

106 The first is *DPP v Paapaa.*[14] The offender obtained $106,599.28 by deception by manipulating her employer's management systems on 28 occasions. The

[13] Defence Outline of Submissions dated 31 January 2024.
[14] [2019] VCC 2032.

offending was therefore comparable to yours. The offender was 47 years of age and had suffered a stroke which meant she was confined to a wheelchair and required assistance in respect of the activities of daily living. His Honour Judge D. Sexton imposed a CCO of 2 years and 6 months.

107 In *DPP v Venn,*[15] the offending was more serious. A bookkeeper stole $165,480.15 on 22 occasions over a 4 year period. The offender engaged in 'devious and deceptive practices to carry out [her] crimes and to avoid detection'.[16] Delay was a significant mitigatory factor. Her Honour Judge Patrick imposed a 3 year CCO.

108 Finally, in *DPP v Chapman,*[17] His Honour Judge Lacava imposed a 3 year CCO where the offender had stolen $250,000 from his employer over a relatively short period of time.

109 In each case, the sentencing Judge recognised the importance of general deterrence in white collar dishonesty cases but determined that all relevant sentencing purposes could be satisfied by a community based disposition.

110 Such cases are not precedents. It is trite to acknowledge that each case is to be sentenced according to its own unique facts and circumstances. A sentencing Judge must strive to give effect to established sentencing principles as explained by appellate courts. The relevant principles in relation to offending of this nature have been reiterated by the Court of Appeal on several occasions.[18]

111 There are numerous cases where senior employees who have used their positions to enrich themselves have received terms of imprisonment sometimes in combination with a CCO.[19] This is consistent with the importance of general deterrence in such sentencing exercises. However, the common features of

[15] [2017] VCC 1043.
[16] Ibid, [25].
[17] [2016] VCC 231.
[18] See *Bulfin* (n2), 131-2; *Dyason v The Queen* [2015] VSCA 120 at [32]-[34]; and *DPP v Caulfield* [2019] VSCA 131.
[19] *Bulfin* (n2); *Dyason v The Queen* [2015] VSCA 120; *DPP v Caulfield* [2019] VSCA 131.

cases where custodial sentences have been imposed are: first, the amounts obtained far exceed the amount involved in your case; secondly, the offending occurred over a protracted period of time; and thirdly, the offender sought to cover up their conduct. Your case does not have these features.

112 Significantly, the Court of Appeal has explained that, because of the punitive features of CCOs as explained in the case of *Boulton,*[20] the sentencing principle of general deterrence will not always require a term of imprisonment to be imposed in cases of white collar dishonesty offending.[21] However, in assessing in a particular case whether a CCO (whether alone or in combination with a custodial sentence) is an adequate sentence, a sentencing court must continue to have regard to the considerations referred to in *Bulfin*[22] as noted earlier.

113 In this regard, I consider that a number of the features which were present in *Bulfin* are absent from your case. You were not funding an extravagant lifestyle; you did not engage in a carefully calculated course of conduct over a long period; substantial amounts of money were not involved and your victims were not individuals. Finally, your simplistic method of offending did not mean that detection of your offending was particularly challenging for authorities.

114 It is also necessary to have regard to the statutory mandate, as expressed in s 5(4) of the *Sentencing Act 1991* (Vic), that a court must not impose a term of imprisonment on an offender unless the purposes for which sentence are to be imposed cannot be achieved by a sentence that does not involve confinement of the offender.[23]

Consideration

115 I have noted earlier in these reasons why I consider the objective gravity of your offending to be low to mid range. Your moral culpability for your offending is

[20] *Boulton v The Queen* [2014] VSCA 342.
[21] *DPP v Zanin* [2020] VCC 963; *DPP v Brown* [2020] VCC 1522.
[22] *Dyason v The Queen* [2015] VSCA 120, [40].
[23] See also s 5(4C).

considerable and is not lessened by your gambling problem. That problem merely provides an explanation for your offending.

116 You have obviously held many responsible positions in the past that would have enabled you to offend in a similar manner. That you have never done so suggests that it was the gambling that precipitated this offending. As noted earlier this is relevant to my assessment of your prospects of rehabilitation.

117 It is relevant that the couples who were duped by you have not themselves suffered any loss. While the losses incurred by your former employer are not insignificant, they are less than the amounts in most of the other cases to which I have referred.

118 I have already referred to the importance of general deterrence. Specific deterrence has a lesser role to play. The evidence before me is that your gambling problems are being addressed. Considering that you lived an unblemished life for 42 years before this offending, and given the unusual circumstances that led you to offend, I accept that, with the right supports, you are unlikely to offend again. Corrections assess you as a low risk of re-offending.[24]

119 It is also relevant that the publicity that your case has attracted in the local media will operate as a deterrent to any future offending.

120 Taking account of all of the relevant sentencing considerations including the impact on the victim company and its staff, the maximum penalty, and your personal circumstances, I am satisfied that a 2 year and 6 month CCO is an adequate sentence in your case. I intend to impose a condition that you complete 250 hours of unpaid community work and that you receive support for your gambling problems. You have been assessed by Corrections Victoria as suitable for such an order.

[24]Community Correction Order Assessment Outcome Report dated 8 February 2024, p 1.

121 As the thirteen offences to which you have pleaded guilty are part of a series of offences of the same or similar character, I am able to impose a single CCO in respect of those offences[25] and I do so.

122 Mr El-Asmar, I need to explain to you the standard terms attached to all community correction orders and I will go through those now. Listen carefully, please:

- You must not commit, whether in or outside Victoria, during the period of the order, an offence punishable by imprisonment.
- You must comply with any obligations or requirement prescribed by the regulations.
- You must report to and receive visits from the Secretary or their delegate during the period of the order.
- You must report to the Community Correction Centre specified in the order within two clear working days after the order comes into force, that is, within two clear working days of today.
- You must notify the Secretary or their delegate of any change of address or employment within two clear working days after the change.
- You must not leave Victoria except with the permission of the Secretary or their delegate either generally or in relation to a particular case.
- You must comply with any direction given by the Secretary or their delegate that is necessary for the Secretary or their delegate to give to ensure you comply with the order.

[25] *Sentencing Act 1991* (Vic,), s 40.

123 In addition to those general conditions which apply to every community correction order I impose the following special conditions to the order that I impose on you:

- You must report to Melbourne Justice Service Centre within two working days of today.
- You must complete 250 hours of unpaid community work.
- You must participate in any program recommended to address factors relating to your offending;[26]
- 80 hours of treatment or rehabilitation is to count as unpaid community work;
- You are to be supervised, monitored and managed as directed by the Secretary or their delegate.

124 Mr El-Asmar, under the law I cannot make a community correction order unless you agree to the terms and conditions. I note that you agreed to them when you were assessed for suitability for the order. I need to ask you now, do you agree to comply with the community correction order and the terms and conditions which I have set out?

125 You must understand, Mr El-Asmar, that if you contravene any of the conditions of the order, which will commence today, then that in itself is an offence punishable by a maximum of three months' imprisonment. Should that occur you will be brought back before this court and it is possible that, depending upon the circumstances, the order will be cancelled and you will be ordered to serve a term of imprisonment instead.

Orders

126 You are convicted and sentenced in respect of charges 1-13 to a community correction order of 2 years and 6 months' duration.

[26] *Sentencing Act 1991 (*Vic), s 48D(3)(f).

127 The Order commences today.

128 In addition to the mandatory terms, you must perform 250 hours of unpaid community work as directed by the Regional Manager and participate in programs to address the causes of your offending as directed by the Manager. 80 hours of treatment or rehabilitation are to count as unpaid community work.

129 You are under the supervision of a Community Corrections Officer for the duration of the Order.

130 Pursuant to s 6AAA of the *Sentencing Act 1991*, I declare that, if you had been convicted by a jury of these offences, I would have sentenced you to 13 months in prison with a non parole period of 7 months.

131 Pursuant to s 86 of the *Sentencing Act 1991* (Vic), being satisfied that as a result of the offending All Saints Estate has experienced monetary loss, I order by consent that Maroun Nadim El-Asmar pay to All Saints Estate compensation in the sum of $57,797.50.